

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEVIN L. CHAMBERS,)
Plaintiff,)
v.) No. 4:06-CV-449-SNL
STATE OF MISSOURI,)
Defendant.)

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Kevin L. Chambers for leave to remove a state court action to this Court without payment of the required filing fee. *See* 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that Chambers is financially unable to pay any portion of the filing fee. Therefore, Chambers will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Jackson Sawmill Co. v. United States*, 580 F.2d 302, 306 (8th Cir. 1978), *cert. denied*, 439 U.S. 1070 (1979).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183 (1984).

28 U.S.C. § 1446(c)(4)

Additionally, 28 U.S.C. § 1446(c)(4) provides that a district court shall examine a notice of removal promptly and, "[i]f it appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." 28 U.S.C. § 1446(c)(4).

The notice of removal

Liberally construing the notice of removal, it appears that Chambers seeks, for the second time, to remove to the United States District Court for the Eastern District of Missouri a criminal case which is pending against him in the St. Louis County Circuit Court. See *Chambers v. State of Missouri*, No. 4:05-cv-1885-SNL (E.D.Mo.). On September 15, 2005, the prosecuting attorney filed a complaint against Chambers charging him with class C felony drug possession.

Chambers alleges that the charges against him are the product of conspiracy, retaliation and fraud by the St. Louis County Drug Task Force and the St. Louis County Prosecutor's Office to conceal the criminal and civil liability of St. Louis County and its agents.

Discussion

This matter should be summarily remanded to the Twenty-First Judicial Circuit (St. Louis County) for the State of Missouri.

Chambers attempts, by relying on somewhat different case law and legal theories, to rest his second removal action on a sounder foundation than that of the first action. However, this does not preclude the operation of res judicata. *See Lane v. Peterson* 899 F.2d 737, 744 (8th Cir. 1990). The instant removal petition is, in essence, the same as that which Chambers previously filed and arises from “. . . the same nucleus of operative facts as the prior claim.” *See id.*

The Court dismissed Chambers’s previous removal action as frivolous, pursuant to § 1915(e)(2)(B). Therefore, this complaint must also be dismissed. *See Waller v. Groose*, 38 F.3d 1007, 1008 (8th Cir. 1994) (holding that dismissal of claim as frivolous has res judicata effect on frivolousness determinations for future in forma pauperis petitions raising identical claims.)

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff’s motion for leave to proceed in forma pauperis [Doc. 1] be **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief may be granted or both. *See* 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that this matter be remanded to the Twenty-First Judicial Circuit (St. Louis County) for the State of Missouri. *See* 28 U.S.C. § 1446(c)(4).

An appropriate order of dismissal will accompany this order and memorandum.

Dated this 17th day of March, 2006.


SENIOR UNITED STATES DISTRICT JUDGE